IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

MONDAY, THE 25TH JUNE 2007 / 4TH ASHADHA 1929

AR.No. 1 of 2007()

APPLICANT:

K.V.JOSEPH & SONS,
ENGINEERING CONTRACTORS, KUREEKAL BUILDING,
EDAPPALLY P.O.
COCHIN- 682 024.

BY ADV. SRI.RAJIV ABRAHAM GEORGE
SRI.EAPEN ABRAHAM GEORGE

RESPONDENTS: OPPOSITE PARTIES
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1. THE STATE OF KERALA REP. BY
THE SECRETARY TO GOVERNMENT,
PUBLIC WORKS DEPARTMENT,
GOVERNMENT SECRETARIAT,
TRIVANDRUM - 695 001.

2. THE SUPERINTENDING ENGINEER,
PUBLIC WORKS DEPARTMENT,
NATIONAL HIGHWAYS SOUTH CIRCLE, PMG PATTOM ROAD,
TRIVANDRUM- 695 004.

BY GOVERNMENT PLEADER SRI.SHYSON P.MANGUZHA.

THIS ARBITRATION REQUEST HAVING BEEN FINALLY HEARD ON 25/06/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

PIUS C. KURIAKOSE, J.

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ARBITRATION REQUEST No.1 OF 2007

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DATED THIS THE 25TH JUNE, 2007

O R D E R

This request is submitted by the applicant-contractor under sub-sections (6) and (8) of Section 11 of the Arbitration and Conciliation Act, 1996. The prayer is that the Chief Justice/Designated Judge may appoint Mr.Justice B.M.Thulasidas, former Judge of this Court, nominated by the applicant as their nominee, as the sole arbitrator to adjudicate upon the disputes and differences which have arisen between the applicant and the opposite parties. The 1st opposite party is the State and the 2nd opposite party is the Superintending Engineer, Public Works Department, National Highways South Circle, Thiruvananthapuram. The work of "CRF Works – Improvements to Kadambanadu-Mannady-Enathu-Ezhamkulam Road in Pathanamthitta District" was awarded to the applicant by the 2nd respondent and formal contract agreement was executed between the parties on 25.5.2004. The stipulated date for completion of the work was 22.7.2005. Several disputes arose between the parties during the course of execution of the work and finally by Annexure-I notice dated 19.6.2006, the applicant treated the contract as at an end and called upon the opposite parties to pay a sum of Rs.34,75,89,178.40

together with interest, within 30 days. The claims were rejected by the Executive Engineer under the 2nd opposite party by Annexure-2 letter dated 15.7.2006. Invoking the arbitration clause contained in the agreement, the applicant sent Annexure-3, panel of five names of independent and impartial persons of repute (all of them retired Judges of this Court, one a former Chief Justice of the High Court of Madhya Pradesh) for consideration by the 1st opposite party for appointment of any one among them as the sole arbitrator to adjudicate upon the disputes and differences between the parties. The applicant submits that in spite of the elapse of more than two months after Annexure-3 was received by the opposite parties, they neither agreed upon any person from the panel suggested by the applicant nor did they suggest any alternative panel for the applicant's consideration. Under the above circumstances, the applicant appointed Mr.Justice B.M.Thulasidas, former Judge of this Court as their nominee-arbitrator and issued Annexure-4 notice calling upon the opposite parties to appoint their nominee-arbitrator under clause 25.3 of the Conditions of Contract at the earliest so as to set in motion the arbitral proceedings. The applicant refers to Clause 25.3 (c) of the General Conditions of Contract as well as the special conditions of

contract and submits that if one of the parties failed to appoint its arbitrator in pursuance of sub-clauses (a) and (b) within 30 days, then the Council, Indian Roads Congress should appoint arbitrator on behalf of such defaulting party. Accordingly, the Council, Indian Roads Congress, New Delhi was called upon to appoint an arbitrator on behalf of the State of Kerala through Annexure-5 notice dated 14.11.2006. There is no response from the Council to Annexure-5 notice. It is under these circumstances that the arbitration request is filed in this Court by the applicant. Annexure-6 is copy of the arbitration clause which is contained in condition No.3 of the Special Conditions of Contract which forms part of the contract agreement.

2. Detailed counter affidavit has been filed on behalf of the 1st opposite party refuting the various claims of the applicant. However, towards the end of the counter affidavit, it is stated that in case this Court is inclined to appoint Tribunal, one among the two, viz., (1) Mr.Justice T.V.Ramakrishnan, former Judge of this Court; (2) Sri.E.Kurian Mathew, Chief Engineer (Retired), be appointed as the sole arbitrator. But at the Bar, both sides would say that it is ideal to have both of them together as the Tribunal.

3. Having considered the rival pleadings and the rival

submissions addressed before me by Mr.Rajiv A. George, learned counsel for the applicant and Mr.Shyson P.Manguzha, learned Government Pleader and the relevant statutory provisions as well as judicial precedents governing the issue, I do not find any reason as to why the request should not be granted. Accordingly, allowing the application I appoint Mr.Justice B.M.Thulasidas, Retired Judge of this Court and Mr.E.Kurian Mathew, Retired Chief Engineer, Kerala PWD, residing at 33/2527-C, Ezhumanthuruthil Madapath Road, Thammanam PO., Kochi-682032, as joint arbitrators who will constitute the Arbitral Tribunal. The Tribunal will enter on arbitration and settle the disputes which are subject-matter of this request at their earliest.

The Registry will communicate this order to the Arbitrators.

(PIUS C.KURIAKOSE, JUDGE)

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